

STATE OF MICHIGAN
COURT OF APPEALS

DAVID P. BEANE,

Plaintiff-Appellant,

v

BERNICE C. EDGE,

Defendant-Appellee.

UNPUBLISHED

April 3, 2001

No. 215230

Oakland Circuit Court

LC No. 96-518994-NI

Before: Neff, P.J., and Talbot and J.B. Sullivan,* J.J.

PER CURIAM.

In this automobile negligence action, plaintiff appeals as of right from a judgment for defendant entered after a jury found that plaintiff's injuries did not result in a serious impairment of a body function. We affirm.

On appeal, plaintiff claims only instructional error, our review of which is de novo. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000). The trial court is required to give a standard jury instruction, including a party's theory of the case, if the instruction is requested by a party, it is applicable, and it accurately states the law. MCR 2.516(B)(3) and (D)(2); *Pakideh v Franklin Commercial Mortgage Group, Inc*, 213 Mich App 636, 641; 540 NW2d 777 (1995). Even if somewhat imperfect, instructions do not create error requiring reversal if, on balance, the theories of the parties and the applicable law are adequately and fairly presented to the jury. *Case, supra*. We reverse for instructional error only where failure to do so would be inconsistent with substantial injustice. *Id.*, citing *Johnson v Corbet*, 423 Mich 304; 377 NW2d 713 (1985).

In this case, the court mistakenly gave SJI2d 36.11, instead of the applicable SJI2d 36.01. Following plaintiff's timely objection, the court recalled the jury, read the correct instruction and told the jury to disregard anything said earlier to the contrary. Under these circumstances, we do not find error requiring reversal. *Meehan v Michigan Bell Tel Co*, 174 Mich App 538, 572-573; 436 NW2d 711 (1989). We further find that the court's decision to reinstruct the jury instead of granting a mistrial was not an abuse of discretion. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 635; 607 NW2d 100 (1999).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Plaintiff's remaining claims of instructional error do not warrant relief. The court's alleged failure to give SJI2d 3.02 and SJI2d 10.05 is not supported by the record. The court did fail to initially give SJI2d 3.10 and SJI2d 4.11, but called the jury back and gave the omitted instructions before the jurors began deliberations. *Meehan, supra*. Because defendant did not admit liability, the court did not abuse its discretion in ruling that SJI2d 17.01 was inapplicable. *Rice v ISI Mfg, Inc*, 207 Mich App 634, 637; 525 NW2d 533 (1994). Plaintiff's express waiver of SJI2d 7.01 precludes appellate review. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000); *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997). Similarly, plaintiff's assertions of error regarding SJI2d 3.04, 10.02, 36.05, 50.01 and 50.11 were neither preserved with an appropriate objection after the jury was instructed, *Zinchook v Turkewycz*, 128 Mich App 513, 520; 340 NW2d 844 (1983), nor has plaintiff briefed the merits of his claims. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). The court failed to add the statement that defendant admitted negligence to SJI2d 10.02, but added it to SJI2d 36.05 and the jury properly found that defendant was negligent. Hence, there was no effect on the verdict. Similarly, because the jury never reached the issue of damages, any deviation from the standard language of SJI2d 50.01 or SJI2d 50.11 had no effect on the verdict.

Affirmed.

/s/ Janet T. Neff
/s/ Michael J. Talbot
/s/ Joseph B. Sullivan